

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

VS.

CRIMINAL NO. 2:18-cr-23-KS-MTP

CARL NICHOLSON

DEFENDANT

ORDER DENYING GOVERNMENT'S MOTION FOR RELEASE OF
DEFENDANT'S MEDICAL RECORDS, ETC.

THIS CAUSE IS BEFORE THE COURT on Government's Motion [74] for Release of Defendant's Medical Records or Alternatively an Order to Submit to BOP Evaluation. The Court has reviewed the draft of the Presentence Report, considered this Motion and the Defendant's response to the Presentence Investigation Report [74-1]. In its Motion the Government asserts that it requested the medical records that were obtained by U.S. Probation prior to preparing the Presentence Report draft. The Defendant objects to the disclosing of the medical records to the Government, and Probation has declined to furnish same. It is reported to the Court that the medical records exceed 1500 pages and cover a period from January of 2014 to March of 2019. The Presentence Investigation Report draft indicates in paragraph 106 that the defendant's physical condition is as follows,

"The defendant stated he has Type 2 diabetes, high blood pressure, high cholesterol, diverticulitis, and acid reflux. The defendant is prescribed medications for these ailments and is treated by Dr. Jack Hudson at Hattiesburg Clinic in Hattiesburg, Mississippi. Additionally, the defendant advised he experiences pain due to the diverticulitis and has difficulty sleeping. Furthermore, the defendant noted he had a colonoscopy on February 26, 2019.

Paragraph 107. Extensive medical records were received from Hattiesburg Clinic, which contained records from January 2014 to March 2019. The records were consistent with the medical and health history reported by the defendant.”

In his Response to Presentence Investigation Report, [74-1], the Defendant appears to argue that his health conditions should warrant a downward departure or variance in his sentence pursuant to 18 U.S.C. §3553. The Court has considered the report from U.S. Probation, the Government’s Motion and the Response to the Presentence Investigation Report and finds that the maladies listed in Paragraph 106 do not indicate any illness that cannot be treated in most BOP facilities. Probation indicates that the 1500 pages of medical records are consistent with the listed maladies related to Probation by the defendant. The Court finds no reason to justify ordering Probation to furnish the medical records to the Government nor to require defendant to submit to a BOP evaluation prior to sentencing pursuant to 18 U.S.C. §3552(b). For that reason the Court finds that the Government’s Motion should be DENIED. If however additional medical conditions significantly more serious than the ones listed in the Presentence Report are argued at sentencing, the Court may reconsider the denial of the evaluation pursuant to 18 U.S.C. §3552(b).

SO ORDERED this the 2nd day of May, 2019.

s/Keith Starrett
UNITED STATES DISTRICT JUDGE